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IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

RAY WILL,
Petitioner,
v.
MICHIGAN DEPARTMENT OF STATE POLICE AND DIRECTOR OF MICHIGAN STATE POLICE,
Respondents.

On Writ of Certiorari to the Supreme Court of Michigan

BRIEF OF THE NATIONAL GOVERNORS' ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, COUNCIL OF STATE GOVERNMENTS, U.S. CONFERENCE OF MAYORS, AND NATIONAL CONFERENCE OF STATE LEGISLATURES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether a State is a "person" subject to liability for money damages under 42 U.S.C. 1983.

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INTEREST OF THE *AMICI CURIAE*

The *amici*, organizations whose members include state, county, and municipal governments and officials throughout the United States, have a compelling interest in legal issues that affect state and local governments.

The issue of statutory interpretation presented in this case—whether a State is a "person" within the meaning of 42 U.S.C. 1983—has obvious importance for state governments. This Court has never directly considered that question because, until recently, actions under Section 1983 were generally instituted in the federal courts, where the Eleventh Amendment bars an action against a State under Section 1983. See *Quern v. Jordan*, 440

U.S. 332 (1979). The Eleventh Amendment is, of course, unavailable as a defense in state court.

The court below correctly concluded that Congress did not intend to subject the States to damages liability under Section 1983. Because this Court's decision will have a direct effect on matters of substantial importance to *amici* and their members, *amici* submit this brief to assist the Court in its resolution of the case.[1]

STATEMENT

1. Petitioner Ray Will became an employee of the State of Michigan in 1969. Four years later, petitioner applied for promotion to a position as a data system analyst with the Department of State Police. The police department ran a security check on petitioner, which turned up information about petitioner's brother, Charles Will, who had received extensive publicity for his anti-war activities and liberal political views during 1970 and 1971.[2] Petitioner was not promoted by the police department; he subsequently obtained an equivalent position with the state highway department. Pet. App. 11a; J.A. 35-36.

Petitioner did not learn that the police department's security check had uncovered information about his brother's political activities until 1977, when petitioner's brother obtained a copy of his police file. Petitioner filed a grievance with the state Civil Service Commission, asserting that the decision to deny him the promotion had impermissibly been influenced by his brother's political activities. The grievance was denied as untimely. Petitioner then commenced an action in Michigan circuit

[1] The parties' letters of consent, pursuant to Rule 36 of the Rules of this Court, have been filed with the Clerk.

[2] Charles Will's police file was one of a number of such files maintained by the Special Investigation Unit of the Michigan Department of State Police. The Michigan state courts subsequently held that maintenance of these files on individuals' domestic political activities was unconstitutional. Pet. App. 11a; Pet. Br. App. 1a-8a; J.A. 70-73.

court against the state Department of Civil Service, the state personnel director, the Department of State Police, and the director of state police, alleging violations of the United States Constitution and the Michigan Constitution. He sought damages under both 42 U.S.C. 1983 and state law. The court remanded the case to the state Civil Service Commission for a grievance hearing. Pet. App. 11a-12a; J.A. 13-14.

The Civil Service Commission hearing officer held that the State had violated both the state constitution and state civil service rules. J.A. 34-48. He found that petitioner had established a "prima facie case of partisan considerations involved in the selection process" and that the police department had failed to rebut petitioner's showing that his brother's political activities were a substantial factor in the decision to deny petitioner the promotion. J.A. 45-47. The hearing officer awarded petitioner damages of approximately $200—the amount of salary he found that petitioner had lost as a result of the police department's employment decision. J.A. 47-48, 60. The Commission affirmed the hearing officer's determination. J.A. 49-52. Neither the State nor petitioner sought judicial review of that ruling.

2. In November 1978, while the grievance proceeding was pending before the state Civil Service Commission, petitioner filed suit in the Michigan Court of Claims. His complaint alleged a claim under 42 U.S.C. 1983 essentially identical to the claim asserted in the action before the state circuit court. Pet. App. 12a; J.A. 15-23. The court of claims action was consolidated with the circuit court case. J.A. 24-26, 27-30, 31-33.

In 1982, following the Civil Service Commission's decision, the state circuit court entered judgment in petitioner's favor on his Section 1983 claim. J.A. 59-67. The court held that the Commission's ruling established a federal constitutional violation because "the State having established a system of merit [promotion decisions],

• • • the denial of [petitioner's] promotion based on [petitioner's] brother's political persuasion violates due process." J.A. 61. The court also held that the Michigan Department of State Police and its director, sued in his official capacity, were included within the class of "person[s]" subject to damages liability under Section 1983 (see J.A. 61-65). Petitioner was awarded damages of approximately $153,000.[3]

The state court of appeals reversed in part and remanded in part. Pet. App. 124a-136a. It concluded that neither the State itself nor a state official sued in his official capacity could be held liable for money damages under Section 1983. The court remanded the case so that the circuit court could determine whether the director of state police was liable for damages in his personal capacity.

3. The Supreme Court of Michigan affirmed in part and reversed in part by a divided vote. Pet. App. 3a-123a. The court first held that the State was not a "person" subject to liability under Section 1983. It observed that this Court had concluded in *Quern v. Jordan*, 440 U.S. 332 (1979), that Congress did not abrogate the States' Eleventh Amendment immunity when it enacted Section 1983. The Michigan court stated that, because Congress adopted Section 1983 in large part "to provide a remedy in federal, not state courts," Congress would not have left the States' Eleventh Amendment immunity intact if it had intended to subject the States to any liability under the statute. Pet. App. 44a. In the court's view, Congress would not have chosen to " 'enact a statute creating a remedy for violation of civil rights, while at the same time precluding private individuals from bringing actions under the statute against states

[3] Only $584.64 of this amount represented lost wages. The bulk of the damages award was for loss of career opportunities ($40,544), emotional distress and mental anxiety ($56,052), and exemplary damages ($56,052). J.A. 79.

in federal court but permitting such actions against states in state courts' " (*id.* at 44a-45a (citation omitted)).

The Michigan Supreme Court noted that "the circumstances surrounding passage of § 1983" also supported its determination that the States are not subject to liability under that statute. Pet. App. 45a. Exposing the States to suits for damages would have been "a controversial proposition in 1871," but there was very little debate on the provision that became Section 1983. *Ibid.* The court concluded that the absence of debate indicated that Congress did not view Section 1983 as subjecting the States to damages liability.

Finally, the Michigan Supreme Court rejected petitioner's argument that Section 1983 authorizes suit against a state official in his official capacity. It held that an official-capacity action against a state official seeking retroactive relief is, in reality, an action against the State itself. Because a State is not a "person" under Section 1983, an official-capacity action cannot be maintained under the statute. Pet. App. 47a-54a.

Two justices dissented with respect to these issues. Relying upon Justice Brennan's concurring opinion in *Quern v. Jordan*, *supra*, they concluded that the States are included within the term "person" in Section 1983 and therefore are subject to liability under the statute. Pet. App. 117a-120a.[4]

[4] The Michigan Supreme Court also resolved a companion case in which another plaintiff had asserted an action for damages based on the Michigan Constitution. The court held that "[a] claim for damages against the state arising from violation of the Michigan Constitution may be recognized in appropriate cases," and it remanded the case to allow the lower court to consider whether damages were appropriate in the circumstances there presented. Pet. App. 9a, 10a; see also *id.* at 109a-117a, 122a-123a. Petitioner failed to preserve a claim for damages for violations of the Michigan Constitution (see *id.* at 98a-101a).

INTRODUCTION AND SUMMARY OF ARGUMENT

We agree with petitioner (Br. 9) that the question presented in this case is solely an issue of statutory construction—whether Congress intended the term "person" in 42 U.S.C. 1983 to include the States and thereby to subject them to liability for damages under that statute. But petitioner and his supporting *amici* err in assuming that this is a garden-variety issue of statutory interpretation, to be approached in the same manner as, for example, ascertaining the meaning of the term "interest in property" in the Bankruptcy Code (see *United Savings Ass'n v. Timbers of Inwood Forest Assocs.*, 108 S. Ct. 626 (1988)), or the jurisdiction of the Provider Reimbursement Review Board under the Medicare Act (see *Bethesda Hospital Ass'n v. Bowen*, 108 S.Ct. 1255 (1988)).

This Court has recognized in a variety of contexts that before a court concludes that Congress has acted to limit the sovereign authority of the States, it must apply a legal standard far more rigorous than the test that governs routine issues of statutory interpretation: the court must find clear evidence that Congress intended to burden the States. That strict standard should be applied in determining whether Congress intended to subject the States to damages liability under federal law. Because Congress did not expressly include the States within the class of persons who may be sued under Section 1983, a damages claim may not be asserted against a State, a state agency, or a state official sued in his official capacity.

In any event, even if the routine statutory interpretation standard were applied to the question here, it is clear that Section 1983 does not authorize damages actions against the States. Congress used the term "person" to define the class of defendants subject to liability under Section 1983. This Court has held that that term excludes sovereigns such as the States, absent evidence

of contrary congressional intent. In this case, the other evidence of congressional intent is not to the contrary; it all weighs strongly in favor of construing Section 1983 to exempt the States from liability.

Legislators opposed to the bill that became Section 1983 devoted considerable attention to the intrusions upon state sovereignty that they believed would result from adoption of the statute, but no legislator mentioned suits for money damages against the States. That omission is strong evidence that Congress did not believe that the statute would have such an effect. In addition, this Court has repeatedly held that Congress intended damages liability under Section 1983 to be limited by the common-law immunities that were well established at the time the statute was enacted. No immunity was clearer in 1871 than the sovereign's immunity from suits for damages.

Moreover, Congress's principal reason for adopting Section 1983 was to provide citizens with a federal forum to vindicate their federal constitutional rights. If Congress had intended to create a cause of action against the States, it undoubtedly would have ensured that such claims could be brought in federal court. The fact that Congress did not abrogate the States' Eleventh Amendment immunity in enacting Section 1983 (see *Quern v. Jordan*, 440 U.S. 332 (1979)) confirms that Congress could not have wanted to subject the States to liability under the statute.

Finally, there is no basis for petitioner's claim that a suit against a state official in his official capacity should be treated as anything other than a suit against the State. As this Court recently observed, "the real party in interest in an official-capacity suit is the entity represented and not the individual officeholder" (*Karcher v. May*, 108 S.Ct. 388, 393 (1987)). Petitioner accordingly cannot use this pleading device to circumvent Congress's decision to exempt the States from liability under Section 1983.

ARGUMENT

THE STATE OF MICHIGAN IS NOT A "PERSON" SUBJECT TO LIABILITY UNDER SECTION 1983

The Supreme Court of Michigan's conclusion that Section 1983 does not impose damages liability upon the States is correct for two separate reasons. First, because Congress did not clearly indicate that the States themselves were subject to suit under Section 1983, the statute should not be construed to have that effect. Second, even without resort to the "clear statement" rule, the outcome is the same. The statutory language and legislative history conclusively demonstrate that Congress did not intend to eliminate the States' sovereign immunity from damages liability when it enacted Section 1983.[5]

[5] Petitioner (Br. 25-27) and his supporting *amici* (Br. 10-11 & nn. 19-21) contend that the Court has already resolved this statutory question in petitioner's favor. This implausible assertion finds no support in the cases cited by petitioner and *amici*, none of which expressly addresses the issue presented here.

Indeed, the cited cases do not even implicitly support petitioner's contention. In *Maine v. Thiboutot*, 448 U.S. 1 (1980), and *Martinez v. California*, 444 U.S. 277 (1980), the States were not the sole defendants; state officials also were joined as defendants, either in their personal capacities on claims for damages or under the principle set forth in *Ex Parte Young*, 209 U.S. 123 (1908), on claims for injunctive relief. See pages 29-30, *infra*. Because the Court could properly have entertained both suits even if the States had been dismissed as defendants, the Court had no occasion to address the scope of the term "person" under Section 1983. Petitioner also relies on the fact that this Court has "debate[d]" (Br. 25) the States' ability to waive their Eleventh Amendment immunity without suggesting that, in the event of such a waiver, a Section 1983 claim would be dismissed for failure to state a claim. The Court's failure to address the issue one way or the other cannot be read as an endorsement of petitioner's interpretation of the statute; it merely indicates that the question is one that the Court has not resolved. Petitioner cites this Court's decision in *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979), holding that interstate agencies are subject to suit under Section 1983, but the Court reached that result precisely because such agencies *differed* from States (see *id.* at 400-401).

A. Congress Must Clearly Indicate Its Intent To Subject The States To Damages Liability Under Federal Law And It Has Not Done So Here.

1. This Court has repeatedly recognized that the States occupy a special position in our constitutional system. See, *e.g.*, *Lane County v. Oregon*, 74 U.S. (7 Wall.) 71, 76 (1868) (referring to "the necessary existence of the States, and, within their proper spheres, the independent authority of the States"). The federal government is limited to the powers specifically delegated to it by the Constitution; the remaining powers are "reserved to the States" and to the people (U.S. Const. Amend. X). Moreover, the Constitution contains a number of limitations upon federal authority designed to protect the sovereignty of the States. See U.S. Const. Art. I, § 8, cl. 16; Art. I, § 9, cl. 5; Art. I, § 9, cl. 6; Art. II, § 3; Art. IV, § 3; Art. IV, § 4; Art. V; Amend. XI. And this Court has held that the Constitution implicitly bars Congress from exercising its delegated powers in a manner that infringes impermissibly upon state sovereignty. *Coyle v. Oklahoma*, 221 U.S. 559 (1911); see also *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 556 (1985) (citing *Coyle*).

To be sure, the Constitution does not completely insulate the States against the power of the federal government; Congress retains considerable authority to enact legislation that directly or indirectly limits the States' freedom to choose for themselves the manner in which to exercise their sovereign authority. But even when there is no dispute that Congress has the constitutional power to act in a manner that trenches on state sovereignty, this Court has recognized that proper respect for the States' position in the constitutional scheme demands that courts take special care in determining whether Congress chose to exercise that power in a given instance. Thus, it is well settled that "Congress may abrogate the States' constitutionally secured immunity from suit in federal court only by making its intention [to do so] unmistak-

ably clear in the language of the statute." *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985); see also *Welch v. Texas Dep't of Highways*, 107 S.Ct. 2941, 2946-2947 (1987) (plurality opinion); *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 99 (1984) (*Pennhurst II*).

The Court has applied a similar rule of statutory construction in determining whether Congress intended to exercise its power under Section 5 of the Fourteenth Amendment, stating that a court should "not quickly attribute to Congress an unstated intent to act under its authority to enforce the Fourteenth Amendment" (*Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1, 16 (1981) (*Pennhurst I*)). The Court has refused to find that Congress exercised that power absent clear evidence of congressional intent. *Id.* at 18. An analogous principle applies to congressional action under the Spending Clause: "if Congress intends to impose a condition on the grant of federal moneys [to a State], it must do so unambiguously." *Id.* at 17; see also *South Dakota v. Dole*, 107 S.Ct. 2793, 2796 (1987).

Yet another example of this general approach is the test applied to decide whether Congress intended to preempt state law. The Court "start[s] with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the *clear and manifest purpose of Congress.*" *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (emphasis added); see also *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 369 (1986). Similarly, in determining whether Congress intended to exercise the full extent of its authority under the Commerce Clause, and thereby limit state authority over the subject of the federal legislation, the Court has consistently required a clear statement of congressional intent. *United States v. Bass*, 404 U.S. 336, 349 (1971); see also *Community Communications Co. v. City of Boulder*, 455 U.S. 40, 53 (1982) (state action exemption from the antitrust laws is grounded in deference to state sovereignty).

The Court has based each of these rules of statutory construction on the importance of according proper respect to the States' sovereignty and to the constitutional balance of authority between the federal government and the States. See *Atascadero*, 473 U.S. at 242 (Congress's power to abrogate the States' Eleventh Amendment immunity "means that in certain circumstances the usual constitutional balance between the States and the Federal Government does not obtain"; accordingly, a court must be certain that Congress intended to exercise that power before concluding that the States are subject to the jurisdiction of the federal courts); *Pennhurst I*, 451 U.S. at 16 (because legislation grounded in Congress's power under the Fourteenth Amendment "imposes congressional policy on a State involuntarily, and because it often intrudes on traditional state authority," there is a special need to ensure that Congress actually intended that result); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977) (rule requiring clear intent to preempt state law "provides assurance that 'the federal-state balance' * * * will not be disturbed unintentionally by Congress or unnecessarily by the courts"); *United States v. Bass*, 404 U.S. at 349 ("In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.").

Congress's power to subject the States to damages liability under federal law intrudes upon state sovereignty in a manner at least as substantial as the federal actions discussed above. The rule that a sovereign cannot be sued without its consent surely reflects one of the most basic attributes of sovereignty. See page 23, *infra*. Holding the States liable in damages on a federal cause of action obviously interferes with this aspect of state sovereignty. In addition, the monetary burden imposed upon the States may well interfere with the States' ability to accomplish important policy goals. For these reasons, the States should not be subject to liability on a

federal cause of action absent clear evidence that Congress intended that result.

Indeed, this Court has already recognized that it is appropriate to insist upon congressional clarity in this area. In *Wilson v. Omaha Indian Tribe*, 442 U.S. 653 (1979), the Court faced the question whether the State of Iowa was a "white person" within the meaning of a statute that placed the burden of proof upon white persons in court actions adjudicating rights to property when an Indian is a party. The Court stated that in " 'common usage, the term "person" does not include the sovereign, [and] statutes employing the phrase are ordinarily construed to exclude it.' Particularly is this true where the statute imposes a burden or limitation, as distinguished from conferring a benefit or advantage." 442 U.S. at 667 (citations omitted); see also pages 16-17, *infra*. *Wilson* states a more general version of the rule for which we contend here: broad language is not sufficient to subject the States to damages liability under federal law. Congress must unambiguously indicate its intent to subject the States to its authority in order to achieve that result.[6]

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[6] Petitioner cites (Br. 24) several cases in which the Court concluded that the States were subject to liability under a federal statute without requiring clear proof of congressional intent. But in those cases the Court acknowledged the principle of statutory construction for which we contend. It simply held that Congress's plain intent to subject the entire railroad industry to uniform economic and safety regulation established with the necessary clarity that Congress intended to cover state-owned railroads as well as privately owned railroads. See *California v. Taylor*, 353 U.S. 553, 562-564 (1957); *United States v. California*, 297 U.S. 175, 185-186 (1936); see also *Parden v. Terminal Ry.*, 377 U.S. 184, 188-189 (1964) (also relying upon congressional intent to regulate entire industry); *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275, 280-282 (1959) (same approach in construing statute relating to maritime matters). That rationale obviously does not apply here because the question is not whether the States are to be subject to the same regulations as private industry; the issue is the definition

2. Petitioner argues (Br. 37) that this Court's decisions under the Eleventh Amendment are irrelevant here because there is no Eleventh Amendment issue in this case. Strictly speaking petitioner is correct: the resolution of the question whether a particular statute abrogates the States' Eleventh Amendment immunity is not automatically determinative of the question whether the statute creates a cause of action against the States. Congress could enact a statute that expressly preserves the States' Eleventh Amendment immunity but at the same time expressly includes the States within the class of persons subject to liability on the federal claim.

What petitioner ignores, however, is that this Court's Eleventh Amendment decisions are relevant in two more general respects. The first, which we have already discussed, is that the considerations of federalism underlying the rule of statutory interpretation applicable in the Eleventh Amendment context are equally relevant to the determination whether Congress intended to subject the States to damages liability on a federal cause of action.[7]

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of the class of state actors that Congress intended to hold liable in damages.

Moreover, the decisions cited by petitioner were rendered before the Court had clarified its Eleventh Amendment jurisprudence. As we have discussed, the standard now applied by the Court in the Eleventh Amendment context, and the Court's more recent decisions in related areas, establish that the test applied in *Wilson* is the proper approach in deciding whether Congress intended to burden the States by subjecting them to liability under federal law. (Petitioner asserts (Br. 24 n.14) that the plurality in *Welch* reaffirmed the prior conclusion that the States were subject to liability under the Federal Employers' Liability Act, but the *Welch* plurality did not address the State's statutory liability (see 107 S.Ct. at 2947 n.6)).

[7] Petitioner argues (Br. 37) that the Court has differentiated between the inquiry under the Eleventh Amendment and the question whether the States are subject to liability. But the decisions that petitioner cites leave open the second question, holding only that Congress did not abrogate the States' Eleventh

Second, the Court's Eleventh Amendment jurisprudence is relevant to the question presented here because of the close relationship between the issue of statutory construction under the Eleventh Amendment—whether Congress intended to subject the States to suit in federal court—and the question whether Congress intended to subject the States to liability at all. In the vast majority of cases, Congress does not expressly address either the States' susceptibility to liability in general or their susceptibility to suit in federal court, but it seems likely that Congress would expect the two issues to be resolved in the same way. When Congress creates a federal cause of action, its general assumption undoubtedly is that claims brought under that statute will be heard in federal court under the general grant of federal question jurisdiction (see 28 U.S.C. 1331) or under a more specific grant of subject-matter jurisdiction.[8] Indeed, it is difficult to see why Congress would wish to create classes of federal claims cognizable only in state court, at least absent special circumstances favoring that result. For these reasons, if Congress focused on the issue, it almost certainly would choose either to subject the States to suit in federal court or to exempt them from liability altogether.

Applying different statutory interpretation standards to the liability and Eleventh Amendment issues increases the chances that the two issues will be resolved differently. This would create a class of federal actions against the States that may be brought only in state court—a peculiar result that is most unlikely to reflect what

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Amendment immunity. See *Welch*, 107 S.Ct. at 2947 n.6 (plurality opinion); *Atascadero*, 473 U.S. at 238-240 n.2; *Employees v. Missouri Dep't of Public Health*, 411 U.S. 279, 287 (1973). These decisions accordingly provide no basis for applying different statutory interpretation standards in these two contexts.

[8] For example, Congress provided for exclusive jurisdiction in the federal courts over claims under the Copyright Act (see 28 U.S.C. 1338(a)), undoubtedly assuming that all persons subject to liability for copyright infringement were subject to the jurisdiction of the federal courts.

Congress meant to accomplish. As this Court recently remarked, Congress would not make "[s]uch a major change in the existing rules * * * without specific provision in the text of the statute" (*United Savings Ass'n v. Timbers of Inwood Forest*, 108 S.Ct. at 634). Thus, to avoid a subversion of congressional intent, this Court should apply the same legal standard to both of these closely related questions of statutory interpretation.

3. Congress has not clearly expressed its intent to subject the States to liability under Section 1983. Nothing in the language of Section 1983 indicates that the States may be sued under the statute and, as we discuss in detail below (at 16-21), the legislative history contains no evidence that Congress intended or even anticipated that result.

Indeed, this conclusion is virtually compelled by *Quern v. Jordan*, 440 U.S. 332 (1979), in which this Court held that Congress did not intend to abrogate the States' Eleventh Amendment immunity from suit in federal court on claims under Section 1983. Although the *Quern* Court stated its ultimate conclusion in terms of the absence of a clear congressional intent to abrogate the States' Eleventh Amendment immunity, that conclusion rested on the determination that the statutory language and legislative history did not clearly demonstrate "that Congress intended by the general language of § 1983 to override the traditional sovereign immunity of the States." *Id.* at 341; see also *id.* at 343. That very determination is dispositive in the present case: because Congress did not set forth with clarity its intent to override the States' sovereign immunity and subject them to damages liability, Section 1983 cannot be interpreted to impose such liability upon the States.

B. Congress Did Not Intend To Subject The States To Liability Under Section 1983.

Even if ordinary standards of statutory interpretation are applied in determining whether Congress intended to subject the States to liability under Section 1983, the only

possible conclusion is that Congress had no such intent. Again, the *Quern* Court's analysis of the relevant portions of the legislative history of Section 1983 leaves no room for the conclusion that the States themselves may be held liable in damages. The Court in *Quern* considered and rejected a variety of attempts to find in the legislative history evidence of congressional intent to subject the States to liability. Those same contentions cannot now be resurrected on the ground that *Quern* held only that Congress's intent was not "clear." Congressional intent simply cannot be sliced so thinly. The Court's unequivocal rejection of the arguments now advanced by petitioner precludes a contrary determination here. As Justice Brennan recognized in his separate opinion in *Quern*, the Court effectively determined in that case that "a State is not a 'person' for purposes of 42 U.S.C. § 1983" (440 U.S. at 350).

1. *The language and legislative history of Section 1983 show that Congress did not intend to impose liability on the States.*

As with any question of statutory interpretation, analysis of the scope of Section 1983 must begin with the relevant statutory language—here, the term "person." This Court has stated that "in common usage, the term 'person' does not include the sovereign, [and] statutes employing the phrase are ordinarily construed to exclude it." *United States v. Cooper Corp.*, 312 U.S. 600, 604 (1941); see also *Wilson v. Omaha Indian Tribe*, 442 U.S. at 667 (applying this rule in holding that the term "white persons" did not include the sovereign States); *Stanley v. Schwalby*, 147 U.S. 508 (1893). This principle of statutory construction is especially applicable where the effect of construing "person" broadly would be to impose a burden upon the States. *Wilson v. Omaha Indian Tribe*, 442 U.S. at 667; *United States v. Knight*, 39 U.S. 301, 315 (1840); compare *Georgia v. Evans*, 316 U.S. 159 (1942) (holding that a State is a "person"

entitled to bring an action under the Sherman Act because States would otherwise be deprived of the *benefit* of the remedy prescribed by the federal statute).[9] The presumption may, of course, be overcome by evidence of contrary congressional intent. But a review of the relevant legislative materials supports rather than undercuts the conclusion that Congress did not intend to subject the States to liability under Section 1983.

Section 1983, originally enacted as Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, was not Congress's first venture into general federal civil rights legislation. Five years earlier, Congress had enacted Section 2 of the Civil Rights Act of 1866, 14 Stat. 27, which imposed criminal penalties upon persons who deprived others of their constitutional rights. Section 1 of the 1871 Act created a federal civil remedy for conduct that violated Section 2 of the 1866 Act. Other provisions of the 1871 Act criminalized conspiracies to deny constitutional rights and authorized both the imposition of martial law and the suspension of habeas corpus in the event that a local insurrection went unchecked in any State. Although the 1871 Act was passed expeditiously, it was the subject of extensive and heated debate in both the House and the Senate. "The Act * * * was passed by a partisan vote in a highly inflamed atmosphere. It was preceded by spirited debate which pointed out its grave character and susceptibility of abuse * * *." *Collins v. Hardyman*, 341

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[9] Petitioner bases his argument (Br. 23) for a broad construction of the term "person" upon this Court's statement in *Monell v. Department of Social Servs.*, 436 U.S. 658, 701 (1978), that "absent a clear statement in the legislative history supporting the conclusion that § 1 was not to apply to the official acts of a municipal corporation," municipalities should be presumed to be "persons" under the statute. For the reasons we have already discussed (see page 12 and note 6, *supra*), that principle simply does not apply to the determination whether the States are encompassed within the term "person." Indeed, even the *Monell* Court recognized the distinctive role of the States by explicitly limiting its holding to "local government units which are not considered part of the State for Eleventh Amendment purposes" (436 U.S. at 690 n.54).

U.S. 651, 657 (1951). Two aspects of that debate shed light upon the question of statutory interpretation presented here.

First, "[g]iven the importance of the States' traditional sovereign immunity, if in fact the Members of the 42d Congress believed that § 1 of the 1871 Act overrode that immunity, surely there would have been lengthy debate on this point and it would have been paraded out by the opponents of the Act along with the other evils that they thought would result from the Act" (*Quern*, 440 U.S. at 343). In fact, although Congress extensively debated other provisions of the 1871 Act, very little attention was paid to Section 1 and the debates do not contain even a hint that the provision was intended to subject the States themselves to suits for damages. See *ibid.*; *Monell*, 436 U.S. at 665.[10]

Despite "anguished outcr[ies] from those committed to unrevised notions of state sovereignty," *Quern*, 440 U.S. at 364 (Brennan, J., concurring), none of the Act's opponents even suggested that Section 1 would erode the States' sovereign immunity, and possibly their fiscal integrity, by opening the door to damages actions against the States. The bill's opponents focused instead on the threat to state authority posed by the Act's martial law and habeas corpus provisions. See *Quern*, 440 U.S. at 341 n.10; Nowak, *The Scope of Congressional Power to Create Causes of Action Against State Government and the History of the Eleventh and Fourteenth Amendments*, 75 Colum. L. Rev. 1413, 1466-1467 & n.257 (1975); Wolcher, *Sovereign Immunity and the Supremacy Clause*, 69 Calif. L. Rev. 189, 210 & n.79 (1981).

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[10] Most members of the 42d Congress accepted the proposition that Section 1 "merely carr[ies] out the principles of the civil rights bill [of 1866], which have since become a part of the Constitution." Cong. Globe, 42d Cong., 1st Sess. 568 (1871) (Sen. Edmunds). See also Appendix to Cong. Globe, 42d Cong., 1st Sess. 68 (1871) (Rep. Shellabarger).

The most thorough and painstaking critique of Section 1 by a Southern Senator raised five separate objections to the provision, but omitted entirely from the parade of horribles any reference to potential state damages liability. See Appendix to Cong. Globe, 42d Cong., 1st Sess. 216-217 (1871) (Globe App.) (Sen. Thurman). This omission is particularly significant in light of the repeated allusions by Southern Members of Congress to the parlous financial straits of the vanquished South and the injustice of levying federal taxes on depleted state treasuries. See, *e.g.*, Cong. Globe, 42d Cong., 1st Sess. 336 (1871) (Globe) (Rep. Whitthorne); *id.* at 362 (Rep. Swann); *id.* at 377 (Rep. Waddell); *id.* at 379 (Rep. Shober). Such opposition as was leveled at Section 1 focused on the potential effects of the provision on individual officials rather than state governments. Representative Arthur stated that "[u]nder the provisions of this section every judge in the state court and every other officer thereof, great or small, will enter upon and pursue the call of official duty with the sword of Damocles suspended over him by a silken thread * * *." Globe at 366. Legislators raised fears of unlimited liability of legislative, executive, and judicial officers under Section 1. See, *e.g.*, *id.* at 385 (Rep. Lewis); Globe App. at 217 (Sen. Thurman).

If the notion that Section 1 subjected the States themselves to similar unlimited damages liability had been considered even remotely plausible, the bill's opponents undoubtedly would have raised such an argument in the debates. The only conclusion to be drawn is that "this silence on the matter is itself a significant indication" that Congress did not intend to subject the States to damages liability under the statute (*Quern*, 440 U.S. at 343).[11]

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[11] Petitioner's *amici* are simply wrong in asserting (Br. 5) that Representative Shellabarger "explained" that Section 1 authorized a remedy against the States. Representative Shellabarger said no

The debate over a challenge to the constitutionality of Section 1 raised by legislators opposed to the adoption of that provision also illuminates the question presented here. These legislators asserted that the bill was unconstitutional because the States were *excluded* from its proscriptions. "The language [of the Fourteenth Amendment] is 'No State' shall do this or that. Individuals nor a combination of individuals are mentioned, and yet they are to be brought under the provisions of the bill and the 'State' is to be exempted." Globe App. at 208 (Rep. Blair). Proponents of the bill answered this contention by arguing that the States acted through their officials, that the actions of those officials constituted state action reachable under the Fourteenth Amendment, and that Congress therefore had the power to impose liability on those officials. Globe at 661, 662 (Sen. Vickers); *id.* at 696 (Sen. Edmunds). The fact that the proponents of the legislation chose to defend the provision in this manner, without ever proffering the much more obvious explanation that the term "person" included the States as well, is powerful evidence that Congress did not intend to subject the States to liability.[12]

Petitioner (Br. 10-16) and his *amici* (Br. 5-8, 11-18) seize upon various statements in the legislative history to the effect that Section 1983 and the Fourteenth Amendment were intended to reach abuses of state authority; they assert that these passages demonstrate Congress's intent to subject the States themselves to damages liability. There can be no doubt that the target of both the Fourteenth Amendment and Section 1983 was unconstitutional state action; indeed, state action is the predicate for the application of the Fourteenth Amendment. But there is a clear difference between defining the types of unconstitutional abuses of state power that violate a statute and describing the class of defendants liable in damages for such unlawful conduct. These portions of the debate over Section 1983 relate directly to the former issue, but have no relevance at all to ascertaining Congress's intent with respect to the latter question.[13]

Petitioner also relies (Br. 18-22) upon the debate over the Sherman Amendment, a provision that, in its modified version, would have subjected local governments to vicarious liability for damages caused by mob violence. As a threshold matter, it is difficult to see how Congress's *rejection* of the Sherman Amendment can be interpreted to justify *imposing* liability upon the States. Petitioner states that the debate over the Sherman Amendment demonstrates that Congress believed it "could" impose damages liability upon the States (Br. 21, 22). But the question is not whether Congress thought it had the power to subject the States to this liability; the question is whether Congress intended to do so. And what is significant about the Sherman Amendment debate is that there was never even an attempt to impose this sort of vicarious liability upon the States, despite the fact that one Congressman suggested that course of action (see Globe at 791 (Rep. Willard)). That fact clearly demonstrates Congress's reluctance to intrude upon the States' sovereign immunity, and weighs heavily in favor of the conclusion that the States are not subject to any liability under Section 1983.

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such thing; he simply explained that the statute provided a remedy for unconstitutional abuses of state power. See pages 20-21, *infra*.

[12] Petitioner thus errs (Br. 17-18) in asserting that this aspect of the legislative history of Section 1983 weighs in favor of his interpretation of the statute. The discussion of action by government officials justified the imposition of liability on individuals for unconstitutional abuses of state power; it provides no basis for concluding that Congress intended to impute liability to the States themselves.

[13] Petitioner's *amici* appear to repeat this error in their contention (Br. 14-15) that Section 2 of the 1866 Act, the criminal statute that served as the model for Section 1983, was "directed at [the] states." There is no doubt that the statute is designed to criminalize unconstitutional state action, but it is equally clear that the States themselves are not subject to criminal liability under Section 2.

2. *Congress's intent not to override common-law immunities in enacting Section 1983 confirms that the States are not subject to damages liability.*

Even if the legislative history demonstrating that Congress did not intend to impose damages liability upon the States is put to one side, the conclusion is inescapable that a State is not a "person" within the meaning of Section 1983. This Court has consistently held that "the all-encompassing language of § 1983 [subjecting 'any person' to liability] * * * is not to be taken literally." *Briscoe v. LaHue*, 460 U.S. 325, 330 (1983). "One important assumption underlying the Court's decisions in this area is that members of the 42d Congress were familiar with common-law principles, including defenses previously recognized in ordinary tort litigation, and that they likely intended these common-law principles to obtain, absent specific provisions to the contrary." *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 258 (1981). Accordingly, "[w]here the immunity claimed by the defendant was well established at common law at the time § 1983 was enacted, and where its rationale was compatible with the purposes of the Civil Rights Act, [this Court has] construed the statute to incorporate that immunity." *Owen v. City of Independence*, 445 U.S. 622, 638 (1980).

The Court has applied this principle in a variety of contexts. See *Stump v. Sparkman*, 435 U.S. 349 (1978) (judicial immunity); *Imbler v. Pachtman*, 424 U.S. 409 (1976) (prosecutorial immunity); *Scheuer v. Rhodes*, 416 U.S. 232 (1974) (qualified immunity for executive officials); *Pierson v. Ray*, 386 U.S. 547 (1967) (judicial immunity); *Tenney v. Brandhove*, 341 U.S. 367 (1951) (legislative immunity); see also Steinglass, *The Emerging State Court § 1983 Action: A Procedural Review*, 38 U. Miami L. Rev. 381, 474 (1984); cf. *Owen v. City of Independence*, *supra* (no "good faith" immunity for municipalities under Section 1983 because of absence of common-law history of such immunity).

The rule that "the sovereign cannot be sued in his own courts without his consent" was "a familiar doctrine of the common law" in the post-Civil War era. *The Siren*, 74 U.S. (7 Wall.) 152, 153-54 (1869) ("It is obvious that the public service would be hindered, and the public safety endangered, if the supreme authority could be subjected to suit at the instance of every citizen, and consequently controlled in the use and disposition of the means required for the proper administration of the government."); see also *Railroad Co. v. Tennessee*, 101 U.S. (11 Otto) 337, 339 (1880) ("The principle is elementary that a State cannot be sued in its own courts without its consent."); *Nichols v. United States*, 74 U.S. (7 Wall.) 122, 126 (1869); *Beers v. Arkansas*, 61 U.S. (20 How.) 527, 529 (1857); J. Dillon, *Treatise on the Law of Municipal Corporations* § 14 (1872). Indeed, while state sovereign immunity had common law roots reaching well back into English history (see generally 5 F. Harper, F. James & O. Gray, *The Law of Torts*, §§ 29.1-29.4, at 596-605 (1986)), the doctrine took on new practical significance after the Civil War, as States sought relief from debilitating debts. See Engdahl, *Immunity and Accountability for Positive Governmental Wrongs*, 44 U. Colo. L. Rev. 1, 21 (1972).

No common-law immunity was better established in 1871 than the States' sovereign immunity from suit. Under this Court's settled approach in interpreting Section 1983, the only possible conclusion is that Congress must have intended to incorporate that common-law immunity principle to limit the scope of liability under the statute. For this reason, Congress could not have intended the term "person" in Section 1983 to include the States. See *Quern*, 440 U.S. at 342-343.

3. *Given the purposes of Section 1983, Congress would not have imposed liability upon the States while at the same time barring actions against the States in federal court.*

The principal purpose of Section 1983 was to provide a federal court forum for actions to remedy unconsti-

tutional uses of state power. See *Felder v. Casey*, No. 87-526 (June 22, 1988), slip op. 14 ("the principal remedy Congress chose to provide injured persons was immediate access to *federal* courts" (emphasis in original)); *Patsy v. Board of Regents*, 457 U.S. 496, 503 (1982) ("[I]n passing § 1 [of the Civil Rights Act of 1871], Congress assigned to the federal courts a paramount role in protecting constitutional rights."). Indeed, Congress was driven to create a federal remedy precisely because it believed that state courts were either unwilling or unable to provide a forum for effective vindication of federal constitutional rights. See, *e.g.*, Globe at 321 (Rep. Stoughton); *id.* at 374 (Rep. Lowe); *id.* at 459 (Rep. Coburn); Globe App. at 78 (Rep. Perry); *id.* at 252 (Sen. Morton); see also *Patsy*, 457 U.S. at 506-507; *Mitchum v. Foster*, 407 U.S. 225, 240 (1972); Nichol, *Federalism, State Courts, and Section 1983*, 73 Va. L. Rev. 959, 974-975 (1987). As Senator Osborn observed, "[i]f the State courts had proven themselves competent to suppress the local disorders, or to maintain law and order, we should not have been called upon to legislate." Globe at 653.

The concerns that led Congress to create a federal court remedy undoubtedly would be at their zenith in the event the State itself were the defendant in state court. To the extent that state courts were deficient in vindicating plaintiffs' federal rights as a general matter, it seems likely that those courts would be even more reluctant to decide a case in the plaintiff's favor where that determination would impose monetary liability on the State.[14] Accordingly, if Congress had intended to create a cause of action directly against the States, it certainly would have ensured that such actions could be brought in federal court. The fact that, as this Court held in *Quern*,

[14] This Court has stated that "[t]he defects Congress perceived in state courts lay in their jury factfinding processes" (*Felder*, slip op. 15 n.4). A jury would have been especially reluctant to return a damages verdict against a State a century ago because the judgment would have added to the State's liabilities and could thereby have increased the tax burden on all citizens.

Congress did not abrogate the State's Eleventh Amendment immunity is strong evidence that Congress did not intend to subject the States themselves to any liability under Section 1983.

Contrary to petitioner's contention (Br. 32-36), the historic limitations on federal question jurisdiction do not support an interpretation of Section 1983 that would permit actions against States only in state court. The anomaly in petitioner's interpretation of the statute is not simply that a federal claim could be brought only in state court. Rather, petitioner's argument would result in a large class of federal claims that could not be brought in federal court despite the fact that Congress's clear intention was to open the federal courts to claims cognizable under Section 1983. This anomaly is compounded by the fact that Section 1983 does not by its terms require the States to entertain claims under that provision. See *Martinez*, 444 U.S. at 283 n.7. Petitioner's construction of the statute could thus result in a cause of action that cannot be heard in any court.[15]

Petitioner's theory is anomalous for another reason as well. At the time Section 1983 was enacted, there had been few waivers of state sovereign immunity and, therefore, state courts simply did not have occasion to hear actions against a State. Those courts accordingly were not likely to have established the special rules of procedure—concerning jurisdiction, service of process, enforcement

[15] Petitioner argues (Br. 38-44) that there is no anomaly because the Congress that enacted Section 1983 would not have thought that the Eleventh Amendment barred actions against the State in federal court. Reduced to its essence, petitioner's argument is that this Court in *Quern* reached the wrong conclusion about Congress's intent to subject the States to suit in federal court. There is no basis for petitioner's second-guessing the Court's decision in *Quern*, which rested not on some abstract legal theorem, but on a close examination of the legislative history of the statute. The Court's conclusion that Congress did not intend to subject the States to the jurisdiction of the federal courts is dispositive of this issue.

of judgments, and the like—necessary to accommodate actions against the sovereign. It is exceedingly doubtful that Congress would have acted to saddle state courts with an entirely new class of cases that those courts were not equipped to adjudicate.

4. ***Policy arguments do not justify a broad expansion of Section 1983 liability.***

Petitioner's *amici* devote much of their discussion not to an analysis of the language and legislative history of Section 1983 but to various policy arguments that allegedly require the inclusion of States within the category of "persons" under the statute. These arguments, even if correct, would not justify a construction of Section 1983 that is at odds with congressional intent. See *Laborers Health & Welfare Trust Fund v. Advance Lightweight Concrete Co.*, 108 S.Ct. 830, 837 (1988). But in fact the arguments are not correct.

To begin with, contrary to the apparent view of petitioner's *amici* (Br. 19-27), this Court has never held that Congress intended Section 1983 to provide compensation to every plaintiff injured by a constitutional violation. Indeed, the Court has specifically rejected that approach, recognizing instead that Congress balanced conflicting policies in determining the scope of liability under the statute. See, *e.g.*, *Davis v. Scherer*, 468 U.S. 183 (1984) (applying qualified immunity test adopted by the Court in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)); *Monell*, 436 U.S. at 690-694 (refusing to subject municipalities to respondeat superior liability and holding that local governments may be held liable only for injuries caused by unconstitutional government policies); *Imbler*, 424 U.S. at 422-423 (prosecutorial immunity is based on "concern that harassment by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust"). Accordingly, there is no reason for the Court to disregard the clear evidence

that Congress did not intend to override well-settled principles of sovereign immunity when it enacted Section 1983.[16]

It is worth noting, moreover, that the interpretation of Section 1983 for which we contend does not deprive prospective plaintiffs of all remedies for unconstitutional state action. First, a plaintiff may maintain an action for injunctive relief in order to protect himself against future harm. Second, state officials may be subject to monetary liability in their personal capacities. Third, state law may authorize an action against the State for unconstitutional conduct. Indeed, in the decision below, the Supreme Court of Michigan recognized a state-law action analogous to Section 1983 (see note 4, *supra*). It was petitioner's failure to preserve his state-law claim that rendered him unable to take advantage of that determination.

Petitioner's *amici* also contend (Br. 27-29) that the threat of constitutional violations will not be deterred sufficiently unless the States themselves are subject to suit under Section 1983. But these *amici* offer no empirical or other support for this assertion; there have been no rampant outbreaks of unconstitutional conduct despite the fact that Section 1983 suits against the States have been relatively infrequent and almost uniformly unsuccessful. We submit that experience has shown that the existing remedies, especially the availability of actions against state officials in their personal capacities, suf-

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[16] Indeed, recent events in Congress demonstrate the continued vitality of the legislative judgment made in 1871. Both before and after this Court's decision in *Quern*, legislation was introduced that would have expressly subjected the States to liability under Section 1983. See S. 990, 97th Cong., 1st Sess. (1981); S. 1983, 96th Cong., 1st Sess. (1979); S. 35, 95th Cong., 1st Sess. (1977); See also Sagafi-Nejad, *Proposed Amendments to Section 1983 Introduced in the Senate*, 27 St. Louis U.L.J. 373 (1983). None of the bills was even reported to the full Senate. Compare Pub. L. No. 96-170, 93 Stat. 1284 (1979) (overturning result in *District of Columbia v. Carter*, 409 U.S. 418 (1973)).

ficiently deter unconstitutional exercises of state power. See, *e.g.*, *Harlow v. Fitzgerald*, 457 U.S. at 814.

C. Petitioner Cannot Circumvent Congress's Decision To Exclude The States From Liability Under Section 1983 By Bringing An Official-Capacity Suit Against State Officials.

Petitioner contends (Br. 28-31) that even if Congress did not intend to subject the States to damages liability under Section 1983, a plaintiff may nonetheless circumvent Congress's design and recover damages from a State simply by changing the form of his complaint. According to petitioner, the statute authorizes a damages action against a state employee in his official capacity even if the State itself is not subject to liability. Petitioner is plainly wrong: attempted artful pleading cannot override congressional intent.[17]

This Court has repeatedly recognized that an action against a government officer in his official capacity "generally represent[s] only another way of pleading an action against an entity of which an officer is an agent" (*Monell*, 436 U.S. at 690 n.55). "As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is *not* a suit against the official personally, for the real party in interest is the entity." *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (emphasis in original; citation omitted); see also *Karcher v. May*, 108 S.Ct. 388, 393 (1987) ("the real party in interest in an official capacity suit is the entity represented and not the individual officeholder"); *Brandon v. Holt*, 469 U.S. 464, 471 (1985).[18]

[17] Even petitioner's *amici* acknowledge (Br. 3 n.2) that "a suit against * * * a state official in his official capacity is for all practical purposes a suit against the state itself" and do not attempt to defend the distinction drawn by petitioner.

[18] "The general rule is that a suit is against the sovereign if 'the judgment sought would expend itself on the public treasury or domain.'" *Dugan v. Rank*, 372 U.S. 609, 620 (1963) (citations omitted); see also *Pennhurst II*, 465 U.S. at 101 n.11. That surely is the case here. Petitioner concededly seeks to recover funds from the state treasury; that is why he brought his action in the Michigan Court of Claims. See Pet. App. 127a-129a.

Since Section 1983 does not authorize suits against the States, and an official-capacity action against a state official is "in all respects other than name" a suit against the State, such an official-capacity action cannot be maintained under Section 1983.

Petitioner nonetheless asserts (Br. 28-29) that this well-settled rule does not apply here because the Court has already concluded in the context of actions for injunctive relief that official-capacity suits are cognizable under Section 1983. This contention rests on a basic misunderstanding of the grounds upon which Section 1983 actions for injunctive relief may be maintained in federal court. In *Ex parte Young*, 209 U.S. 123 (1908), a federal court had enjoined a state Attorney General from bringing suit to enforce a state statute that allegedly violated the Fourteenth Amendment. This Court held that the Eleventh Amendment did not prohibit issuance of the injunction. The Court's rationale was that an unconstitutional enactment is "void" and that the state official was therefore "stripped of his official or representative character and [was] subjected in his person to the consequences of his individual conduct." 209 U.S. at 160; see also *Pennhurst II*, 465 U.S. at 102.

The premise of petitioner's argument is thus incorrect; Section 1983 actions seeking injunctive relief may be maintained in federal court only because of the "fiction" (*Pennhurst II*, 465 U.S. at 102) that they are *not* official capacity actions, but are rather actions against the officer in his personal capacity.[19] As the Court noted in *Ken-*

[19] Contrary to petitioner's claim (Br. 27), the Court's holding in *Hutto v. Finney*, 437 U.S. 678 (1978), that attorney's fees may be awarded against the State in Section 1983 injunctive actions

tucky v. Graham, 473 U.S. at 167 n.14, "actions for prospective relief are not treated as actions against the State." The Court's affirmance of injunctions issued in those actions accordingly cannot support petitioner's contention that official-capacity suits for damages are cognizable under Section 1983.[20]

CONCLUSION

The judgment of the Supreme Court of Michigan should be affirmed.

Respectfully submitted,

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does not indicate that the State is a person within the meaning of Section 1983. The *Hutto* Court was construing a different statute—42 U.S.C. 1988—and relied upon legislative history that specifically authorized fee awards against a State even if the State was not a party to the Section 1983 action (see 437 U.S. at 694). The decision accordingly casts no light on the scope of Section 1983 itself.

[20] Of course, the fact that Section 1983 actions for injunctive relief have been categorized as personal-capacity suits for Eleventh Amendment purposes does not preclude a different characterization for other purposes, such as party substitution rules (see, *e.g.*, Fed. R. Civ. P. 25). Because such actions are personal-capacity suits for at least some purposes, however, this Court's decisions entertaining such actions without expressly addressing their status for Section 1983 purposes cannot be taken as an implicit determination that state officials sued in their official capacities are persons under Section 1983; rather, the Court's decisions can be read to support the conclusion that for Section 1983 purposes, as for Eleventh Amendment purposes, these suits are personal-capacity actions.